

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MEDICAL WEST BALLAS PHARMACY,)
LTD., Individually and on behalf of all others)
similarly-situated,)

Plaintiff,)

v.)

RICHIE ENTERPRISES, L.L.C.,)

Defendant.)

Cause No.:

JURY TRIAL DEMANDED

State Cause No.: 09SL-CC05410

NOTICE OF REMOVAL

Comes now defendant, Richie Enterprises, L.L.C. ("Richie"), and hereby files this Notice of Removal of the above-captioned putative class action to the United States District Court for the Eastern District of Missouri, Eastern Division, and for its grounds, respectfully states as follows:

1. On or about December 21, 2009, plaintiff filed a Petition in the Circuit Court of St. Louis County, Missouri, seeking to certify a class of "[a]ll persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising pharmaceutical products by or on behalf of Defendant, and (3) with respect to whom Defendant cannot provide evidence of prior express permission or invitation," see Petition, ¶¶ 23, 36, and 48, and raising ancillary causes of action.

2. The original Petition alleged that "total damages for all class members is under \$5 million dollars." See ¶ 7.

3. On January 10, 2011, plaintiff filed a First Amended Petition which substantially broadens the proposed class, by removing the third element quoted above, to include: “[a]ll persons who on or after four years prior to the filing of this action, were sent telephone facsimile messages of material advertising pharmaceutical products by or on behalf of Defendant.” See First Amended Petition, ¶¶ 28 and 44.

4. The First Amended Petition no longer alleges that aggregate damages for all class members are under \$5 million.

5. The First Amended Petition also states a new basis for relief under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”); namely, that defendant “did not display the proper opt out notice... required by 64 C.F.R. 1200.” See First Amended Petition, ¶¶ 40-41.

6. Defendant has not filed any pleadings responsive to the First Amended Petition and no further proceedings have occurred in the state court case since the First Amended Petition was filed.

7. Plaintiff alleges that Richie has its principal place of business in Glasgow, Kentucky. See First Amended Petition, ¶ 9.

8. Defendant has a good faith belief that the matter in controversy exceeds the sum or value of \$5 million, exclusive of interest and costs, and is a purported class action in which members of the proposed class of plaintiffs are citizens of a state (Missouri, for example) different from the defendant (Kentucky). Therefore, this Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), as amended (“CAFA”).

9. Removal is proper pursuant to 28 U.S.C. § 1446, in that the initial pleading was not removable but defendant has filed this Notice of Removal within thirty days after receipt of an amended pleading from which it may be ascertained that the case has become removable under CAFA.

10. Defendant has attached hereto all pleadings filed in this matter to date in the Circuit Court of St. Louis County, Missouri.

WHEREFORE, defendant, Richie Enterprises, L.L.C., prays that an Order be entered herein, causing cause No. 09SL-CC05410 of the Circuit Court of St. Louis County, Missouri, to be removed to this court for further proceedings, and that this court take jurisdiction herein and make such further orders as may be proper under the circumstances.

Respectfully Submitted,
EVANS & DIXON, L.L.C.

By: /s/ Brian R. Shank
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this instrument was mailed, postage prepaid on this 18th day of January, 2011, to: Mr. Max G. Margulis, Margulis Law Group, 14236 Cedar Springs Drive, Chesterfield, Missouri 63017; Mr. Brian J. Wanca, Anderson & Wanca, 3701 Algonquin Road, Suite 760, Rolling Meadows, Illinois 60008; Mr. Joseph V. Neill, 5201 Hampton, St. Louis, Missouri 63109; Mr. John S. Steward, Steward Law Firm, LLC, 5201 Hampton, St. Louis, Missouri 63109, attorneys for plaintiff.

/s/ Brian R. Shank

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